



June 28, 2018

Apple Chapman
Deputy Director, Air Enforcement Division
Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, D.C. 20004

Re: New Owner Clean Air Act Audit Program for Oil and Natural Gas Exploration and Production Facilities

Dear Ms. Chapman:

Western Energy Alliance supports EPA's goal of increasing compliance through voluntary company audits of their facilities. Because of the hundreds of thousands of exploration and production (E&P) facilities across the nation, self-reporting by companies can ensure many more facilities are brought into compliance than is possible from relying on EPA's enforcement staff inspections alone. The Alliance appreciates the opportunity to comment on the Oil and Natural Gas Exploration and Production Facilities New Owner Audit Program Agreement.

Western Energy Alliance represents over 300 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in the West. Alliance members are independents, the majority of which are small businesses with an average of fifteen employees.

The point at which a new company takes over existing assets represents an excellent opportunity to ensure a potentially large number of facilities are brought into compliance. The fresh start afforded the acquiring company is advantageous to EPA, state environmental agencies and the acquiring company. Therefore, a new owner audit program should not start from a punitive perspective, but rather one of cooperation. However, the Alliance finds the draft program agreement is too prescriptive and will discourage companies from using it.

The threat of EPA interference in state-implemented voluntary disclosure programs already discourages companies from making voluntary disclosures. As written, the new policy will increase the enforcement uncertainty that these companies will face. To be effective and to encourage companies to voluntarily engage in self audits, which incur considerable costs in terms of staff time, consultant services, and financial resources, companies must be assured that they will not be penalized. EPA should defer to state audit programs and honor state privilege and immunity laws, including those recognized under common law. However, Western Energy Alliance is concerned that rather than follow the example of good state audit programs like the Texas program, the draft policy puts EPA in

the position of interfering in them, the opposite of what we would expect from an Administration with the stated goal of returning to a model of cooperative federalism.

Furthermore, rather than incenting the use of self audits, the policy follows the punitive model from Colorado. The language in Appendix B is taken almost directly from Colorado consent decrees. A company would in effect be opting into enforcement. This indicates that there has been no shift in direction from where EPA was three years ago on this issue. Furthermore, Appendix B is too prescriptive, describing in detail what and how companies are to audit. The policy should be such that companies can self-identify what issues they find in the field and how to apply the best technology and practices to fix them, not just follow one consent decree model.

We believe a new direction is needed with the program, and welcome any opportunity to work with EPA to craft one. EPA should also consider the work the Region 8 Administrator is doing with respect to state immunity and privilege. If the final policy respects the attorney-client privilege, it would encourage companies to participate in self audits, thereby achieving EPA's goal of increasing compliance, a win-win situation.

Sincerely,



Kathleen M. Sgamma
President

cc: Patrick Traylor, Deputy Assistant Administrator, Office of Enforcement & Compliance
Doug Benevento, Region 8 Administrator
Christopher Williams, Chemical Engineer, Office of Civil Enforcement
Tim Sullivan, Region 8 Enforcement Attorney